

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

CALVIN BURKE,

Plaintiff,

v.

ST. LOUIS CITY JAILS, et al.,

Defendants,

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No. 4:14CV2107 RLW

MEMORANDUM AND ORDER

This matter is before the Court on defendant Derek Peterson's motion to dismiss. Peterson argues that there are no allegations in plaintiff's first amended complaint that pertain to him, and therefore, he must be dismissed. Defendant's argument rests on a fundamental mistake and is denied.

In reviewing a motion to dismiss for failure to state a claim upon which relief can be granted, the Court must take all facts alleged in the complaint to be true and must construe the pleadings in the light most favorable to plaintiff. *Gregory v. Dillard's*, 494 F.3d 694, 709 (8th Cir. 2007). The Federal Rules do not require great precision in pleadings. *Id.* at 710. "The simplified notice pleading standard under Fed. R. Civ. P. 8(a) requires only a statement that gives the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Id.* (quotations omitted). However, the factual allegations in the complaint must be more than "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see Gregory*, 494 F.3d at 710. A complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570.


While it is true that plaintiff's first amended complaint failed to name Peterson as a defendant, plaintiff filed a second amended complaint on September 15, 2015. In it, plaintiff alleges that Peterson was responsible for preparing his meals. Plaintiff alleges that Peterson failed to provide him with a kosher diet and failed to provide him with adequate nutrition. Plaintiff claims he lost weight as a result. Cmplt. at 23.

The Court finds that these allegations rise to the level of plausibility necessary to defeat a motion to dismiss. As a result, the motion is denied.

Accordingly,

IT IS HEREBY ORDERED that defendant Derek Peterson's motion to dismiss [ECF No. 68] is **DENIED**.

Dated this 14th day of March, 2016.



RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE